Memo

Date: February 3, 2003

Betty Farbman
Director of Grants and Research

To: **All Project Directors**

Subject: Independent Contractors on Sponsored Projects

Generally, an individual is an independent contractor, rather than an employee, if the person for whom services are performed has the right to control or direct only the result of the work and not the means and methods of accomplishing the result. The Internal Revenue Service determines whether someone is an independent contractor or an employee by weighing the following factors.

An independent contractor is someone who:

- Can earn a profit or suffer a loss from the activity
- Offers his or her services to the general public
- Furnishes the tools and materials needed to do the work
- Is paid by the job or task
- Works for more than one firm at a time
- Does not have a continuing relationship with the hiring firm
- Generally cannot be fired by the hiring firm
- Invests in equipment and facilities
- Pays his or her own business and traveling expenses
- Has the right to quit without incurring liability
- Does not receive instructions or training from the hiring firm regarding how to get
- the job done (may receive instructions regarding the end result)
- Hires and pays assistants at his or her own discretion
- Sets his or her own working hours
- Performs services that are not an integral part of the business.

An employer is generally not responsible for withholding income taxes, withholding and paying Social Security and Medicare taxes, and paying unemployment taxes on behalf of an independent contractor. Consequently, misclassification of employees as independent contractors can lead to severe consequences for an employer. For example, an employer can be subject to severe IRS penalties for misclassification and liable for payment of all back employment taxes with interest. A written contract describing the relationship the parties intend to create can help to protect the employer from such liabilities.

With this in mind, St. John's will no longer allow independent contractors to be hired on sponsored projects without prior approval. The Project Director will be responsible for completing the attached checklist and submitting it to me in advance of hiring an independent contractor. Based on the checklist, we will make a determination of whether the individual qualifies as an independent contractor. If so, an Independent Contractor Agreement will be drafted and must be signed by the individual before work on the project begins. A copy of the Agreement will be returned to the individual and the original maintained in my office.

We hope that this new system will benefit the Project Director in need of independent contractor services and protect the University at the same time.

Please feel free to contact me with any questions.